subsection, impair means that the function, features, capacity, or information involved cannot otherwise be provided by the requesting carrier, or obtained from another source or existing services of the incumbent local exchange carrier including access or resold services, and the failure to obtain the network element would materially diminish the quality of such telecommunications service.

(d) In the case of a proprietary network element, an incumbent local exchange carrier is required to provide unbundled access to such element only if the requesting telecommunications carrier establishes that access is necessary for the requesting carrier to provide a telecommunications service. For purposes of this subsection, necessary means that the requesting carrier could not provide the telecommunications service without access to such proprietary network element.

(e) For purposes of this section, a network element is an unbundled service provided by equipment or facilities that the incumbent local exchange carrier uses to provide telecommunications service to its customers. A network element can be unbundled features, functions, and capabilities, including access to numbers, databases, signaling systems, and information provided by or in such facilities or equipment, of the incumbent local exchange carrier.

X. NOTICE OF CHANGES

The newly imposed statutory duty in Section 251(c)(5) to provide reasonable public notice of changes in information necessary for transmission and routing of services essentially requires the same network disclosure required by the Commission under the so-called "All Carrier Rule."[15] Specifically, the Commission has al-

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[15] See Competition in the Interstate Interexchange Marketplace, *Report and Order*, 6 FCC Rcd 5880, 5911 (continued...)

ready extended to carriers that own basic transmission facilities the requirement that all information relating to network design be released to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates.[16] The Commission's implementing regulations, therefore, need only reiterate the existing "All Carrier Rule."

Rule

> (Under Section 251(c)(5)) Each incumbent local exchange carrier shall provide reasonable public notice of changes in the information necessary for the transmission and routing of services using such carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities or networks.

XI. COLLOCATION

Section 251(c)(6) requires collocation of equipment necessary for interconnection or access to unbundled network elements pursuant to Sections 251(c)(2) and (c)(3). Consistent with the Commission's prior approach to physical collocation in CC Docket No. 91-141, the scope of collocation required should be tailored to

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[15] (...continued)
n.270 (1991) (clarifying that the "All Carrier Rule" requires all carriers to disclose, reasonably in advance of implementation, information regarding any new service or change in the network).

[16] See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), *Memorandum Opinion and Order*, 84 F.C.C.2d 50, 82-83 (1980).

that which is necessary to achieve the underlying public policy objective.[17]

The Commission's implementing regulations thus should require the physical collocation of only that equipment necessary for interconnection or access to unbundled network elements mandated by Sections 251(c)(2) and (c)(3). As the Commission previously concluded in CC Docket 91-141, mandating physical collocation of additional equipment when the requesting carrier is already physically collocated for transmission purposes, would unnecessarily hasten the exhaustion of space available for collocation at the premises of the incumbent LECs.[18] For purposes of collocation, LEC premises is limited to a structure or portion thereof in which the incumbent LEC has the exclusive right of occupancy, and in which is located the technically feasible point of interconnection provided pursuant to Section 252(c)(2) or the technically feasible point of access to network elements provided pursuant to Section 251(c)(3). In other words, if physical collocation of such equipment would merely be convenient, but not necessary to effect interconnection or unbundled access at that point, physical collocation of that equipment should not be required.

Physical collocation of equipment necessary to interconnect or access network elements at the incumbent LEC's central office fulfills the 1996 Act's goal of fos-

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[17] See Expanded Interconnection with Local Telephone Company Facilities, *Report and Order and Notice of Proposed Rulemaking*, 7 FCC Rcd 7369, 7413 n.221 (1992).

[18] See id. at 7414 & n.223.

tering a competitive local exchange marketplace. Moreover, as the Commission previously concluded in CC Docket No. 91-141, incumbent LECs should be required to provide central office space on a first-come, first-served basis until space is exhausted. Thereafter, virtual collation would ensure that all potential interconnectors would be accommodated. Negotiations and marketplace demand would then dictate whether incumbent LECs voluntarily acquired additional space.[19] Physical collocation at points other than at the incumbent LEC's central office should be left to individual negotiations contemplated by Sections 251(c)(1) and 252.

Rule[20]

> (Under Section 251(c)(6)) Each incumbent local exchange carrier has the obligation to provide physical collocation of equipment necessary for interconnection or for access to unbundled network elements pursuant to and in accordance with the requirements set forth in this section.
>
> (a) Incumbent local exchange carriers shall provide for physical collocation of equipment necessary for interconnection for the transmission and routing of telephone exchange service and exchange access, or for access to unbundled network elements, except that such incumbent local exchange carriers may offer virtual collocation instead of physical collocation, upon a finding by the relevant State commission, that physical collocation is not practical for technical reasons or space limitations.
>
> (b) Physical collocation shall be deemed not practical, for technical reasons or space limita-

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[19] See id. at 7406-07.

[20] The proposed rule is based primarily upon the Commission's physical collocation rule (§ 64.1401) previously adopted in CC Docket No. 91-141. See id. at 7505, app. B.

tions, at an individual central office, if that office lacks physical space to accommodate physical collocation or if such space available for physical collocation has been exhausted.

(c) For the purposes of this section, physical collocation means the ability of interconnectors:

(1) to place their own equipment necessary to terminate basic transmission facilities within or upon the incumbent local exchange carrier's central office buildings; and

(2) to use such equipment to connect their own fiber optic systems, microwave radio transmission facilities, or other network facilities (where reasonably feasible) with the incumbent local exchange carrier's equipment and facilities.

(d) For purposes of this section, the term interconnector means any telecommunications carrier entitled to interconnection or access to unbundled network elements pursuant to Sections 251(c)(2) and (c)(3) of the Act.

XII. TECHNICAL FEASIBILITY

Congress has recognized that through the course of complying with Section 251 there will be certain limitations with respect to the technology available and the ability to provide certain technologies. Thus, Congress has expressly qualified several of the newly imposed statutory duties with the concept of technically feasibility. Most notably, under Sections 251(c)(2) and (c)(3), interconnection and access to unbundled network elements are required only at technically feasible points in the incumbent LEC's network.

Although the States are charged with mediating and arbitrating disputes, the Commission should offer guidance regarding what factors should be considered in

determining technical feasibility. Guidance regarding technical feasibility should not be tied to any specific technology and should draw upon the considerable experience of broad-based industry groups, where possible.[21] The Commission should build upon the definition of technical feasibility developed by the Information Industry Liaison Committee ("IILC")[22] for purposes of evaluating unbundling requests by enhanced service providers. IILC has proposed the following criteria for determining technical feasibility:

> (a) Technical feasibility is the determination of a LEC's ability to unbundle and provide a requested service using current or planned technology that can meet the request in time frames consistent with demand. Final determination of technical feasibility may be dependent upon LEC field evaluation and standardization of enabling technology.
>
> (b) There may be instances where a service is technically available only on a limited basis. These include, but are not limited to, instances in which:
>
> (1) the capability is not technically available across all vendors' equipment of a particular type (e.g., across all circuit switches or all packet switches within incumbent LEC serving areas);
>
> (2) the capability is not available across technologies (e.g., available via non-ISDN

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[21] For example, one factor to consider in determining technical feasibility could be whether the interconnection and/or network elements could be ordered, installed, billed, and repaired without significantly affecting the normal operations of the incumbent LEC.

[22] IILC represents a broad cross-section of the industry, including LECs, interexchange carriers, enhanced service providers, and manufacturers.

circuit switch technology, but not via ISDN circuit switch or packet switching technology); or

(3) required enabling technology (e.g., SS7) is not deployed.

(c) Reasons for technical infeasibility include, but are not limited to:

(1) the requested service cannot be supported by existing or planned technology within the telecommunications industry;

(2) technical harm to the public network;

(3) security threat to the public network or individual subscribers' communications and/or proprietary information;

(4) unfavorable field trials/results (to the extent they are publicly available) by other LECs;

(5) the request is not compatible with national or international standards;

(6) desired performance parameters cannot be met (e.g., post-dial delay, cross-network packet delay, transmission levels); or

(7) equipment vendors may be reluctant to develop or support, or both, a requested capability.

(d) Technical feasibility may be affected by inconsistencies with existing LEC operations, administration, provisioning, maintenance, ordering and/or billing support systems or processes. These factors also may influence the cost of providing a service, and the time required to deploy it.[23]

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[23] A Report of the Information Industry Liaison Committee: Unbundling Criteria (Issue 022), September 12, 1991.

XIII. BONA FIDE REQUEST PROCESS

Pursuant to Sections 251(c)(1), (c)(2), and (c)(3), incumbent LECs have the duty to negotiate and promptly provide, upon request, interconnections and access to network elements at any point that is technically feasible. Prescribing a model procedure (i.e., a bona fide request process) would facilitate the negotiations process, and thus the development of a competitive marketplace.

Specifically, a bona fide request process would serve to weed out frivolous or unreasonable claims for interconnection and unbundled access to network elements, while ensuring that legitimate requests are addressed in a prompt and efficient manner. The information exchanged during the course of a bona fide request process would also serve to develop a factual basis upon which the negotiating carriers could determine technical feasibility, subject to guidelines adopted by a broad-based industry forum, such as the IILC. Moreover, bona fide request guidelines would provide a vehicle for prompt resolution of issues that arise during the course of negotiations, including calculation of rates and identification and recovery of costs associated with processing requests.

Outlined below is an example of a bona fide request process that could be established by a State regulatory agency or by individual incumbent LECs for purposes of responding to new requests for interconnection and access to unbundled network elements pursuant to Sections 251(c)(2) and (c)(3):

1. The incumbent LEC's obligation to consider, analyze, and develop a new interconnection or

provide access to a network element begins with the submission of a bona fide request.

2. A bona fide request must be submitted in writing by a telecommunications carrier to the incumbent LEC and must, at a minimum, include: (a) a technical description of each requested network element or interconnection; (b) the desired interface specifications; (c) each requested point of interconnection; (d) how each interconnection or network element will be utilized; (e) any desired changes in operations or procedures; and (f) the quantity ordered at a desired price.

3. The bona fide request must include an explanation of how it complies with the conditions of the Act and the Commission's regulations.

4. The bona fide request must include a commitment either to order the bona fide request in the quantity requested, or to pay the incumbent LEC's costs of processing the bona fide request.

5. The requesting telecommunications carrier may cancel a bona fide request at any time, but will pay the incumbent LEC's reasonable and demonstrable costs of processing the bona fide request up to that date of cancellation.

6. Within ten (10) business days of its receipt, the incumbent LEC must acknowledge receipt of the bona fide request and must advise the requesting telecommunications carrier of any missing information necessary to process the bona fide request. Thereafter, the incumbent LEC must promptly advise the requesting telecommunications carrier of the need for any additional information that will facilitate the processing of the bona fide request.

7. Except under extraordinary circumstances, within thirty (30) days of its receipt of the bona fide request and all information necessary to process it, the incumbent LEC must provide to the requesting telecommunications carrier its preliminary analysis of the bona fide request. The analysis must specify whether or not the requested interconnection or access to an unbundled network element

is technically feasible and otherwise qualifies as a network element or interconnection that the incumbent LEC is required to provide under the Act and the Commission's regulations. If the incumbent LEC later determines that the interconnection or access requested in the bona fide request is not technically feasible or otherwise does not qualify under the Act, it must notify the requesting telecommunications carrier as soon as reasonably possible.

8. In the event the incumbent LEC determines that a bona fide request is not technically feasible, or that the bona fide request otherwise does not qualify as a network element or interconnection that it is required to provide under the Act, the incumbent LEC must advise, as soon as reasonably possible, the requesting telecommunications carrier of that fact, and promptly provide a written report setting forth the basis for its conclusion.

9. If the incumbent LEC determines that the bona fide request is technically feasible and qualifies under the Act, it must promptly proceed with developing the bona fide request as soon as it receives written authorization from the requesting telecommunications carrier. When it receives such authorization, the incumbent LEC must promptly develop the requested services, determine their availability at each requested point, calculate the applicable prices, and establish installation intervals.

10. Bona fide requests must be priced by the incumbent LEC in accordance with Section 252(d)(1) of the Act.

11. As soon as feasible, but not more than one hundred and twenty (120) days after its receipt of authorization to proceed with developing the bona fide request, the incumbent LEC must provide to the requesting telecommunications carrier a bona fide request quote which will include, at a minimum, a description of each interconnection and network element, the quantity to be provided, each requested point where the bona fide request can be provided, the applicable rates, the cost of processing the bona fide request, and the installation intervals.

12. Within thirty (30) days of its receipt of the bona fide request quote, the requesting telecommunications carrier must either confirm its order for the bona fide request pursuant to the bona fide request quote, pay the incumbent LEC its costs of processing the bona fide request, or seek arbitration by the applicable State regulatory agency under Section 252 of the Act. In the event the requesting telecommunications carrier orders the bona fide request pursuant to the bona fide request quote, it may elect to pay the incumbent LEC's costs of processing the bona fide request immediately or have those costs incorporated into the recurring and nonrecurring rates for the bona fide request.

13. In the event that one party to a bona fide request believes that the other party is not requesting, negotiating, or processing the bona fide request in good faith, or disputes a determination, or price or cost quote, it may seek mediation or arbitration by the applicable State regulatory agency under Section 252 of the Act.

Rule

(a) Negotiating carriers or any State may establish a bona fide request process for purposes of an incumbent local exchange carrier responding to new requests by telecommunications carriers for interconnection and access to unbundled network elements.

(b) A bona fide request, at minimum, shall include a commitment by the requesting carrier either to order the network elements or interconnection in the quantity requested or to reimburse the incumbent local exchange carrier for the costs incurred in responding to such request.